No. 14-16310

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Joseph Rudolph Wood III, Plaintiff-Appellant,
vs.
Charles L. Ryan, et al., Defendants-Appellees.

On Appeal from the United States District Court
for the District of Arizona
Case No. 2:14-cv-01447-NVW-JFM

Supplemental Excerpts of Record: Volume 3

JON M. SANDS
Federal Public Defender
District of Arizona
Dale A. Baich
Robin C. Konrad
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2816 voice
(602) 889-3960 facsimile
dale_baich@fd.org
robin_konrad@fd.org

Attorneys for Plaintiff-Appellant Joseph R. Wood

Plaintiff-Appellant Joseph Rudolph Wood III
Excerpts of Record

VOLUME 3 (ERs 186-202):

AFFIDAVIT OF JOSH LEE

I, Josh Lee, do declare as follows:

1. On April 12, 2013, I made a public records request pursuant to Arkansas's Freedom of Information Act for any public records about Arkansas's lethal injection drugs. I made the public records request in an email, a copy of which is appended hereto as Attachment A.

2. On April 15, 2013, Shea Wilson, a spokesperson and public information officer for Arkansas's Department of Correction, responded to my public records request. Ms. Wilson's response consisted of an email with two attachments, copies of which are appended hereto as Attachments B, C, and D.

3. One of the public records that Arkansas's Department of Correction released in response to my request (Attachment D) was a packing slip that contained detailed information about Arkansas's lethal injection drugs, including the name and address of the supplier of those drugs and the batch number of the drugs.

I declare under penalty of perjury under the laws of the United States, Arkansas, Arizona, and California that the foregoing is true and correct to the best of my knowledge.

Josh Lee

Josh Lee

07/16/14

Date

State of Arkansas
County of Pulaski

Subscribed and sworn to before me on this 16th day of July, 2014.

CYNTHIA L. WESTLAKE
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires May 31, 2017
Commission No. 12361103

Cynthia L Westlake

Attachment A to Affidavit of Josh Lee

Attachment A

Gmail by Google

Josh Lee <leejoshr@gmail.com>

FOIA Request for April 12, 2013

Josh Lee <leejoshr@gmail.com> Fri, Apr 12, 2013 at 4:39 PM
To: Shea Wilson <shea.wilson@arkansas.gov>
Cc: Jeff Rosenzweig <jrosenzweig@att.net>, Scott Braden <scott_braden@fd.org>, Jennifer L Molayem <Jennifer_L_Molayem@fd.org>, Julie Pitt <Julie_Pitt@fd.org>, Joseph Luby <jluby@dplclinic.com>

Dear Ms. Wilson:

Pursuant to the FOIA, I am requesting updated information on the two FOIA requests that I submitted on April 2, 2013. This request is limited to records or documents not previously disclosed to me.

I make these requests on behalf of Marcel Williams, Jason McGehee, Jack Jones, Stacey Johnson, Kenneth Williams, Andrew Sasser, Terrick Nooner, and Bruce Ward. I am asking that you disclose any records responsive to both FOIA requests to me as representative of the inmates. I am also asking you to respond separately to each request, inasmuch as only one of the two potentially implicates Act 139 of 2013.

For the purposes of both requests, the term "record" or "document" shall be construed to the broadest extent permissible by the Freedom of Information Act and shall include but not be limited to: letters, faxes, memoranda, minutes, computer printouts, handwritten notes, post-it notes, digital documents and files in any form, emails, draft emails, the residual data of deleted emails, emails sent from private accounts, audio or video recordings, and any and all other records and documents. For the purposes of both requests, the records and documents produced should be according to the terms set forth above and without regard to any assessment of whether a given record or document is relevant. It is requested that the ADC create a specific privilege log noting the existence of any record or document it deems privileged or otherwise not subject to FOIA.

REQUEST ONE: FOR INFORMATION ON EXECUTION SCHEDULING

I request pursuant to the FOIA that you send me any record or document discussing the scheduling of execution dates, created or received by any agent of the ADC on or after January 1, 2013, including but not limited to records or documents mentioning a particular inmate who may be executed and/or a date, range of dates, month, or year when an execution or executions be scheduled, or when an execution date or execution dates may be requested. The disclosures made pursuant to this request should include but not be limited to any correspondence in any form between any agent of the ADC and any agent of the Attorney General's Office and/or any agent of the Governor's Office.

REQUEST TWO: FOR INFORMATION REGARDING EXECUTION DRUGS

I request pursuant to the FOIA that you send me any record or document produced or received by any agent of the Department of Correction on or after February 1, 2013, that relates to the implementation of the

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death penalty by the ADC. For the purposes of this request the phrase "relates to the implementation of the death penalty" shall include but not be limited to anything that relates to a drug or drugs that may be used in lethal injection procedures. For the purposes of this request, a record that "relate[s] to a drug or drug that may be used in lethal injection procedures" shall include but not be limited to any record that mentions any barbiturate drug, including but not limited to any record that uses any of the following words: barbiturate, barbiturates, thiopental, pentothal, midazolam, barbital, butabartial, butisol, butalbital, anxocet, bucet, bupap, butex, forte, dolgic, marten-tab, phrenilin, phrelin, repap, sedapap, tencon, triapin, endolor, esgic, fioricet, margesic, medigesic, repan, triad, fiorinal, fiortal, tecnal, methohexital, brevital, pentobarbital, nembutal, phenobarbital, ancalixir, luminal, solfoton, hydromorphone, primidone, mysoline, propofol, secobarbital, allobarbital, or amobarbital or any other word for any drug or drugs that may be used in the implementation of the death penalty.

Thank you for your attention to this matter.

Josh Lee
Assistant Defender
Arkansas Federal Public Defender
Capital Habeas Unit
1401 W. Capitol, Ste. 490
Little Rock, Arkansas 72207
josh.lee@fd.org
PH (501) 324-6114
FAX (501) 324-5630

Attachment B to Affidavit of Josh Lee

Attachment B

Josh Lee <leejoshr@gmail.com>

FOIA Request for April 12, 2013

Shea Wilson <Shea.Wilson@arkansas.gov> Mon, Apr 15, 2013 at 8:55 AM
To: Josh Lee <leejoshr@gmail.com>
Cc: Jeff Rosenzweig <jrosenzweig@att.net>, Scott Braden <scott_braden@fd.org>, Jennifer L Molayem <Jennifer_L_Molayem@fd.org>, Julie Pitt <Julie_Pitt@fd.org>, Joseph Luby <jluby@dplclinic.com>

Mr. Lee:

Please find attached the lethal injection procedure and packing slips for drugs ADC has received.

If I can be of further assistance, please let me know.

Thanks.

Shea
[Quoted text hidden]

2 attachments

lethal injection procedure.pdf
283K

packing slip for drugs.pdf
127K

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Attachment C to Affidavit of Josh Lee

Attachment C

Revised April 11, 2013

LETHAL INJECTION PROCEDURE (Attachment C)

SECTION I. General

1. The Deputy Director for Health and Correctional Programs, or designee, is responsible for having the chemicals for lethal injection, the gurney, straps, etc., available for use on the scheduled date of execution. Unless otherwise stated, the Deputy Director, or the designee, shall be healthcare trained, educated, and/or experienced in matters related to the establishment and monitoring of IVs, the mixing and administration of lethal chemicals, and assessing the presence or absence of consciousness.

2. When the chemicals have been received, the Deputy Director, or the designee, shall verify as to type and concentration, and thereafter supervise any necessary mixing or reconstituting of the chemicals in such a manner as will meet the injection requirements (see Section IV) and in accordance with manufacturer's instructions. The mixed or reconstituted chemicals shall be transferred to an appropriate syringe and thereafter placed in a designated Injection Drug Box. The box will be secured and conveyed to the Cummins Unit.

3. The Deputy Director, or designee, shall maintain personal, physical custody of the Injection Drug Box and physically convey the box directly to the execution chamber for use. If not used, the Deputy Director, or designee, can secure the box in the institutional vault until used or destroyed.

4. Orientation of the executioner(s) to the Department's *Lethal Injection Procedure*, if needed, will be conducted prior to the day of the execution and provided by the Director and/or designee(s).

5. On the evening of the execution, the executioner(s) shall, under the supervision of the Deputy Director, or designee, enter the injection room prior to the scheduled time of the execution and shall immediately inventory the Injection Drug Box to ensure that all chemicals are accounted for and that the infusion device(s) are in readiness.

6. The execution gurney will be positioned in the death chamber so that the Deputy Director, or designee, and the executioner(s) can directly observe the condemned inmate's face and IV infusion site(s).

Attachment C

Revised April 11, 2013

SECTION II. IV Set-Up Procedure

1. The Deputy Director, or designee, shall have an intravenous infusion device placed in each arm, or other standard anatomical venous point of entry, of the condemned inmate and a solution of N.S. (Normal Saline) available for an infusion medium. The individual(s) engaged in this activity will be referred to as the IV Team and shall be qualified as set forth in Section V.

2. An IV administration set shall be inserted into the outlet of the bag of N.S. IV solution. Two (2) IV bags will be set up in this manner.

3. The administration set tubing for both set-ups will be connected to the receiving port of the three-way control devices; one left arm/side, the other for the right arm/side.

4. IV extension tubing will be connected to the discharge ports on the right/left three-way control devices and shall be thereafter connected to the applicable right and left IV insertion site(s). Extension tubing will be of sufficient length to accommodate distance from control device to IV insertion site(s).

5. The tubing shall be cleared of air and made ready for use.

6. Intravenous catheters shall be initiated through standard procedure for such devices. Once the infusion of the IV solution has been assured, the IV devices shall be secured as appropriate.

7. At this point, the administration sets shall be running at a slow rate of flow (KVO), and ready for the insertion of syringes containing the chemicals. The Deputy Director, or designee, shall maintain observation of IV infusion(s) to ensure that the rate of flow is uninterrupted. NO FURTHER ACTION shall be taken until the prearranged signal to start the injection of chemicals is given by the Warden.

8. In the event that a patent intravenous infusion site cannot be established, the IV Team shall be directed by the Deputy Director, or designee, to evaluate other possible infusion sites. All effort will be made to establish two (2) unrelated intravenous infusion sites. If one (1) patent infusion site is established, and a second site proves to be a futile effort, the Deputy Director, or designee, may direct the IV Team to suspend further action to establish a second site and proceed with one site. In the case that no patent infusion site is established after reasonable attempts as determined by the IV Team, the Deputy Director, or designee will direct the IV Team to suspend further action and thereafter summon trained, educated, and

experienced person(s) necessary to establish a primary IV line as a peripheral line or as a central venous line.

EVERY EFFORT WILL BE EXTENDED TO THE CONDEMNED INMATE TO ENSURE THAT NO UNNECESSARY PAIN OR SUFFERING IS INFLICTED BY THE IV PROCEDURE. STANDARD PRACTICE OF USING A LOCAL ANESTHETIC (1% LIDOCAINE) WILL BE ACCOMMODATED AS NECESSARY.

SECTION III. Injection Procedure

1. The three-way control device facilitates the movement of infusion fluid from saline bag or infusion fluid with the chemicals from the syringes. A valve serves to direct which fluid source is entering the IV set up.

2. When the signal to commence is given by the Warden, the executioner(s) shall administer the Benzodiazepine and Barbiturate under the direction of the Deputy Director, or designee, as follows:

   a. Syringe #1 (containing Benzodiazepine) shall be inserted into the designated receiving port of the three-way control device.

   b. The flow of IV solution will be interrupted by moving the three-way valve assembly to allow the infusion of chemical from the Syringe #1.

   c. The contents of Syringe #1 shall commence with a steady even flow of the chemical. Only the force necessary to activate the syringe plunger will be used.

   d. When the contents of Syringe #1 have been injected, the three-way valve assembly will be moved so as to shut off the infusion of chemical and resume infusion of IV solution.

   e. Syringe #1 will be replaced by Syringe #2 (containing Barbiturate), which shall be inserted into the designated receiving port of the three-way control device. The procedure described in subparagraphs b-d for Syringe #1 will be repeated. This process will be repeated for Syringe #3 (containing Barbiturate).

   f. Throughout the chemical infusion process, the Deputy Director, or designee, will closely monitor the infusion site for evidence of infiltrate, vein collapse, or other challenge to the patency of the infusion site.

Attachment C

Revised April 11, 2013

(1) Should a problem be suspected, the Deputy Director, or designee, will direct reduction of lethal chemical flow rate or redirect lethal chemical to the secondary or alternative site.

(2) If a singular infusion site is suspected to be compromised, chemical flow rate will be reduced. If problem persists, the:

(a) administration procedure will cease;

(b) curtain to death chamber will close; and

(c) the IV Team will be summoned, and the infusion site problem will be corrected.

(3) If all efforts to re-establish patent infusion site fail, the Deputy Director, or designee, will direct the IV Team to suspend further action and a trained, educated, and experienced person(s) necessary to establish a primary IV line as a peripheral line or as a central venous line will be summoned to facilitate an IV infusion site.

(4) When the infusion compromise is corrected, the IV Team and the summoned person(s) will be excused, the curtain reopened, and the lethal injection procedure continued.

g. Following the completion of the administration of the chemicals, the inmate shall be assessed for the absence of respirations and pulse.

(1) If the Deputy Director or designee has the credentials required by Section V, that individual shall assess the inmate's respirations, and pulse. If there is an absence of respirations and pulse, the Coroner shall be summoned for the purpose of pronouncing death.

(2) If the Deputy Director or designee does not have the credentials required by Section V, when there appears to be no pulse or respirations, the curtains shall be closed and the IV Team member shall make an assessment of the inmate's respirations and pulse; if the assessment finds no respirations or pulse, the IV Team member shall exit the chamber, the curtains shall be opened and the Coroner shall be summoned for the purpose of pronouncing death.

(3) If the inmate maintains respirations or a pulse after thirty (30) minutes have elapsed since the completion of the administration of the chemicals, an additional 6 grams of the

Attachment C

barbiturate in the recommended ml shall be drawn into a syringe and administered as described in Section III, 2, b-d.

SECTION IV. Chemical(s)

The following identifies the contents of the Injection Drug Box; denoting administration sequence and chemical makeup of each chemical used.

SYRINGE LABELED/ MARKED	CONTENTS
#1	**Lorazepam**, 12 mg (syringe of 12 mg in recommended ml)
#2/#3	**Phenobarbital Hydrochloride**, 12 grams (two (2) syringes of 6 g in recommended ml)

Section V. IV Team Qualifications

The following certified or licensed individuals with at least two (2) years of professional experience may be on the IV team:

1. Emergency Medical Technician-Intermediate, or
2. Emergency Medical Technician-Paramedic, or
3. Nurse, or
4. Physician Assistant, or
5. Physician.

Attachment C

Attachment D to Affidavit of Josh Lee

WEST-WARD PHARMACEUTICALS

Packing Slip

4/8/2013

From :

West-Ward Pharmaceutical Corp.
4750 Pleasant Hill Rd
Memphis, TN 38118

RW0415299

Ship To :

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

Delivery Number : 0081077448
Purchase Order # : 4501338680
Parcel Number : 003014301051504023
Operator : mcarr

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

DEA# FA1835199

Initials: _____

Line	Material	Material Description	Batch	SLED	Qty	UOM
900001	0641604525	LORAZEPAM 4MG ML VIAL X 25	072383	7/31/2014	4.00	PK

The content of this shipment must be verified against this packing slip at the time of delivery. Any discrepancy must be reported immediately to the carrier and to West-Ward Pharmaceutical Corp. at 1-800-631-2174 (Customer Service). WHEN THIS SHIPMENT CONTAINS CONTROLLED SUBSTANCES failure to timely report discrepancies will obligate the customer to report product shortages directly to DEA on DEA Form 106, Report of Theft or Loss of Controlled Substances, as per 21 CFR 1301.74 (c), 1301.76 (b).
Store at Labeled Temperature.

Attachment D

WEST-WARD PHARMACEUTICALS

Packing Slip

4/9/2013

From :

West-Ward Pharmaceutical Corp.
4750 Pleasant Hill Rd
Memphis, TN 38118

RW0415299

Ship To :

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

Delivery Number : 0081078204
Purchase Order # : 4501338680
Parcel Number : 003014301051507307
Operator : smcfarland

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

DEA# FA1835199

Initials: _____

Line	Material	Material Description	Batch	SLED	Qty	UOM
900001	0641047725	PHENOBARBITAL 130MG ML VIAL X 25	102399	10/31/2015	6.00	PK

The content of this shipment must be verified against this packing slip at the time of delivery. Any discrepancy must be reported immediately to the carrier and to West-Ward Pharmaceutical Corp. at 1-800-631-2174 (Customer Service). WHEN THIS SHIPMENT CONTAINS CONTROLLED SUBSTANCES failure to timely report discrepancies will obligate the customer to report product shortages directly to DEA on DEA Form 106, Report of Theft or Loss of Controlled Substances, as per 21 CFR 1301.74 (c), 1301.76 (b).
Store at Labeled Temperature

Attachment D

WEST-WARD PHARMACEUTICALS

Packing Slip

4/5/2013

From :

West-Ward Pharmaceutical Corp.
4750 Pleasant Hill Rd
Memphis, TN 38118

RW0415299

Ship To :

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

Delivery Number : 0081077447
Purchase Order # : 4501338680
Parcel Number : 003014301051499701
Operator : drichardson

ARKANSAS DEPT OF CORRECTION
6814 PRINCETON PIKE
PINE BLUFF, AR 71602

DEA# FA1835199

Initials: _____

Line	Material	Material Description	Batch	SLED	Qty	UOM
900001	0641047725	PHENOBARBITAL 130MG ML VIAL X 25	102399	10/31/2015	24.00	PK

The content of this shipment must be verified against this packing slip at the time of delivery. Any discrepancy must be reported immediately to the carrier and to West-Ward Pharmaceutical Corp. at 1-800-631-2174 (Customer Service). WHEN THIS SHIPMENT CONTAINS CONTROLLED SUBSTANCES failure to timely report discrepancies will obligate the customer to report product shortages directly to DEA on DEA Form-106, Report of Theft or Loss of Controlled Substances, as per 21 CFR 1301.74 (c), 1301.76 (b).
Store at Labeled Temperature.